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CURRENT TOPICS

A New Rating Bill

NEWS of importance to those who are concerned professionally with valuation and assessment for rating was given by Mr. C. J. EDWARDS, M.P., Parliamentary Secretary to the Ministry of Health, in his address on 28th June to the annual conference of the Incorporated Association of Rating and Valuation Officers. The Government, he said, were proposing, if Parliament approved, to transfer the work of valuation for rating to a central department and to devise a new basis for the assessment of dwelling-houses. The 1925 Act, he said, had not failed, and a great deal had been done to secure uniformity, but much remained to be done. The new method of distributing the block grants, which was designed to help the poorer authorities, made it inevitable that the Government must know the relative financial resources of local authorities. This was only of use if reliance could be placed on the comparability of assessments. Something had to be done now and quickly, and in the Government's view a central organisation was the way in which it should be done. A strong local interest, he said, should be preserved in the appeal machinery. In place of the assessment committee, new bodies could be set up with purely appellate functions and be appointed by county and county borough councils. Quarter sessions, or possibly some other court, would be the second court of appeal. The necessity for county valuation committees would disappear, their object being that of attaining uniformity, and the new central organisation would take its place in that respect. What is likely to be the strongest point in the opposition with which the measure will meet was put forward by Mr. J. D. TRUSTRAM EVE, who said that uniformity throughout the country was unattainable. What they would attain was uniformity of formulæ, and the only reason for wanting uniformity was because the Minister could think of no other way of distributing the Exchequer grants.

Priorities in the Magistrates' Courts

THERE seems to be an unwritten, but in some cases rigid, law of priorities in the magistrates' courts which puts certain cases in which the police are concerned in a high and preferential position to those conducted by solicitors and barristers. Occasions when advocates are in the difficult position of having to appear in two or more different courts on the same day are common enough nowadays, and while they may obtain a sympathetic hearing from the clerk, the bench frequently do not appreciate that advocates perform as important a public service as any other class that assists in the administration of justice. When Mr. A. B. LEMON protested, at Salisbury City Petty Sessions, on 16th June, as the senior solicitor practising in the court, against taking the small cases first, to the great inconvenience of solicitors engaged in other cases, he gave a further reason why solicitors find the priorities of the magistrates' courts troublesome, namely, that they have plenty of work waiting on their desks. There is hardly a solicitor in practice who, owing to shortage of staffs in his own office and elsewhere, does not find himself in arrears with his office work. Without wishing to come before large numbers of police officers giving formal evidence in cases of obstruction or similar cases where defendants for the most part do not appear and the officers can be sent upon their urgent public duties at an early hour of the day's proceedings, solicitors in the magistrates' courts not unnaturally feel that the practice of a rigid rule of discrimination in favour of the police in all cases in which the police prosecute is bound to operate to the disadvantage of themselves. For that reason they will applaud Mr. Lemon's protest and take heart to follow his example, when the need arises.

Crime in London

LONDON statistics usually provide a useful fingerpost to the rest of the country, and, if this is so, small comfort can be derived from the report for 1946 of the Commissioner of Police of the Metropolis. In the early months of the year the total number of indictable crimes, as well as crimes such as housebreaking and burglary, was higher than in the corresponding months of 1945. The numbers fell in July, and the "curve" for all these crimes fell below that for 1945. However, with the return of the dark evenings, it swung sharply upwards, and in December it reached a level much above the high figures of 1945. There followed a welcome reduction. About 9 per cent. of crimes committed, states the report, were, there is reason to believe, committed by deserters. A disturbing feature of the report is the high percentage of serious crimes attributable to youths between the ages of fourteen and twenty. Organised juvenile crime continued to increase, nearly two-thirds of the delinquents operating in gangs, ringleaders of which actually included ninety-one aged ten, thirty-nine aged nine, and five aged eight. These are ominous figures, calling for something more drastic than police remedies. Unfortunately, the police force is weaker in numbers than it has been for sixty years and the return of traffic to the London streets has increased the burden placed upon it. The police strength at the end of the period under review was 14,335, a figure which shows a loss of 118 during the year, but the average age fell from 45 to 37·7.

Dignity of the Law

WE are great believers in this country in formality and ceremony. Most of our public occasions are marked by some ancient survival, a Lord Mayor's coach or the scarlet of a soldier's uniform, emblems of the past which we are loth to discard. Indeed, they add dignity and picturesque colour to the performance of our civic duties, and also the sense of that continuity of history and development of liberty with responsibility which have been characteristics of the people of this island for centuries past. The foundation of our liberties is, of course, law, and so in that sphere, too, ceremonial survives, judges and counsel wear their wigs and robes and solicitors wear their gowns, and there are few, if any, to decry these traditions. In a bright third leader in *The Times* of 21st June, on the subject of trumpeters at Assize, it is recalled that in 1904 the judges resolved that the sheriff's trumpeters should not be abolished. "There can be no doubt," they said, "in the minds of those familiar with the subject that the time-honoured institution of heralding the approach of the King's representative by the sound of trumpets has a tremendous effect in impressing the populace with the importance of the proceedings. The day of the abolition of the trumpeters will be an evil one." Discontinued since the beginning of the war, they have been re-introduced on some circuits. Many solicitors' and barristers' earliest recollections of the law's majesty are of the fanfare of trumpets on Assize. Future generations of lawyers should not be deprived of this instructive and magnificent spectacle.

Capital Issues Control: Borrowing by Local Authorities

BY a Treasury circular dated 3rd July, 1947, consent for the purpose of the Control of Borrowing Order, 1947, is given, with effect until 31st March, 1948, in the case of local authorities in England and Wales, and until 15th May, 1948, in the case of local authorities in Scotland, to the renewal, replacement or other amendment of mortgages without application for specific Treasury consent. For the purpose of the circular mortgages include a local bond, corporation bond or any similar security not marketable or quoted on any stock exchange, but do not include bills, promissory notes or deposit receipts, and replacement means replacement only by other such mortgages. No mortgage may be issued or renewed on terms providing for repayment before a date seven years after the date of issue or renewal, except that (i) it will be permissible to issue mortgages repayable by equal instalments of capital at regular intervals or by an annuity of constant amount, provided that the full currency of the mortgage or renewal is not less than seven years; (ii) the period of any mortgage will not be regarded as determined by the inclusion of a "Stress Clause" under which the lender is entitled to premature repayment in an emergency; (iii) mortgages may be renewed or replaced for a shorter period than seven years, if the terms of any loan sanctions identifiable as specifically governing those mortgages would not permit of a longer renewal or borrowing. All new or renewed mortgages must be made for a definite term, and it may not be a provision of any new or renewed mortgage, either that it may continue to run on at notice after reaching the stipulated date for repayment or renewal or that it may so run during any part of its currency after the first seven years. The circular also deals with exempt transactions, consents and "frozen sanctions," and observes that the present level of interest rates affords a favourable opportunity for local authorities to spread maturing capital obligations over a longer period of years and in particular to reduce the volume of mortgages maturing within seven years. The borrowing period, it is suggested, should, whenever possible, exceed seven years.

Control of Civil Building: Issue of Licences for Special Types of Work

NEW instructions for the issue of licences for special types of work are substituted for provisions of Circular 19/47 in a Ministry of Health Circular 117/47 issued on 2nd July. Licences outside the allocated quotas of labour may be issued for painting and decorative work on which it is clear that the use of men, other than painters, is not involved and where there is no question of a shortage of painters for priority work. Before issuing licences in excess of the ceilings or agreed quotas of labour for any such work local authorities should obtain an authorisation from the Regional Director of the Ministry of Works in accordance with existing practice. In the following particular categories licences may be issued outside the allocated quotas: (*a*) french polishing; (*b*) the supply and laying of rubber or cork flooring; (*c*) work on the repair of lifts; (*d*) insertion of plate glass windows and other shopfitting structural work to the extent that it can be carried out with negligible quantities of softwood timber and by employing only shopfitting craftsmen; (*e*) work on the repair and adaptation of agricultural buildings carried out by non-building craftsmen who specialise in this class of work; and other specialist work such as thatching and well sinking; (*f*) schemes for converting an existing central heating or hot water system with solid fuel or gas-fired boilers to oil firing, provided the applicant has secured written support of the Regional Officers of the Ministry of Fuel and Power or of the Petroleum Board; (*g*) installation of free standing heat storage cookers, boilers or combination stoves, in order to achieve economy of fuel consumption, where the installation involves minor structural alterations but a negligible use of local labour; (*h*) thermal insulation of simple types (other than building boards) needing only minor structural alterations and involving insertion of weather strip in the roof, where this is done by the firm's own specialist labour; or the laying of wood wool, glass wool, slag wool, etc.; (*i*) chestnut pale fencing, fencing consisting of reinforced concrete posts with strands of wire and fencing of hardwood tops with wire strands, but not fencing involving the use of artificial stone, concrete blocks or any other form of steel or timber fencing.

Recent Decisions

In *Longhurst* v. *Metropolitan Water Board*, on 8th July (*The Times*, 9th July), the Court of Appeal (Tucker, Somervell and Evershed, L.JJ.) held, where a passenger on the footpath of a public highway tripped over a flagstone which had become loose owing to a leak in a stopcock belonging to the defendant board and situated some yards further up the pavement and at a higher level, that it was too wide a statement of the board's duty to the public to say, as held by the learned judge in the court below, that they must not only notify the highway authority but also keep a man on the spot or otherwise give the public warning of the danger. The court said that it was elementary that no statutory body exercising powers under the Waterworks Clauses Act, 1847, were responsible for any damage not caused by their negligence. The danger did not emerge from the board's excavation in order to mend the leak, and as the local authority were aware of the dangerous condition in the pavement the board were under no duty to protect the public from it.

In *Squire, E. K.* v. *Squire, M. E. R.*, on 9th July (*The Times*, 10th July), Finnemore, J., held that where a wife respondent to a divorce petition on the ground of cruelty had suffered from insomnia and had made constant demands for years on her husband to sit up half the night reading to her and had insisted on being nursed by him, to the exclusion of other people, with consequent ill effects on his health, there was no cruelty on the part of the wife, as her conduct was not "deliberate, negligent and intended."

In *R.* v. *Rent Tribunal for Croydon and District; ex parte Langford Property Company, Ltd.*, on 10th July (*The Times*, 12th July), a Divisional Court (the Lord Chief Justice, and Lynskey, J., Macnaghten, J., dissenting) granted an order of certiorari to bring up and quash a decision of a rent tribunal reducing the rent of a flat and held that where there was no express provision in the tenancy agreement to provide central heating and hot water and there was no collateral agreement to provide these services, even though the equipment was on the premises to provide them, the tribunal had no jurisdiction to reduce the rent. Macnaghten, J., held that there was an implied obligation to provide the services, and that the tribunal therefore had jurisdiction under s. 2 of the Furnished Houses (Rent Control) Act, 1946, to reduce the rent.

A COMMON LAW REVIEW—JANUARY TO JUNE, 1947

IT is a platitude which will bear repetition in this collective and progressive age that the common law, ancient as are its origins, hallowed as are its basic principles, is yet essentially a living thing. Statutes may amend it, and even abrogate some of its dearest tenets, but the common law itself, enshrining the common sense of the common man, whose rights it confers and whose duties it defines, must always be susceptible of change and capable of adapting itself to contemporary conditions.

So it is that the decisions of the courts in this year of grace on common law subjects are by no means confined to the exemplification of principles already established. For instance, the House of Lords in the last six months has been called upon to examine afresh, in the case of *Christie* v. *Leachinsky* [1947] 1 All E.R. 567, the circumstances which justify a constable in arresting an individual whom he reasonably suspects of having committed a felony. This examination leads Viscount Simon to indite (at p. 572) five propositions which may be taken as conferring on any person so arrested, whether by a constable or a private person, a right to be informed, subject to certain conditions, of the true ground of the arrest. Again, in *Searle* v. *Wallbank* [1947] 1 All E.R. 12; 91 SOL. J. 83, the House considered at length the responsibilities of a landowner so far as concerns the steps necessary to contain his animals within the boundaries of his property. The noble and learned lords found no *prima facie* legal obligation on such an owner so to maintain his fences as to prevent his animals from straying on to an adjoining highway, nor any duty owed by him to users of the highway to take care to prevent the straying of any of his animals not known to be dangerous.

Other important developments in case law have concerned two doctrines, one of tort and the other of contract, both of which have been the subject of much criticism in modern times. See the cases of *Glasgow Corporation* v. *Miller* [1947] 1 All E.R. 1, which deals with common employment, and *Ledingham* v. *Bermejo Estancia Co.* [1947] 1 All E.R. 749, in which a recent trend of judicial opinion unfavourable to the doctrine of consideration appears to be confirmed. The *Glasgow* case was the subject of more extended comment in 91 SOL. J. 285. As a postscript to that article attention may be called to the case of *Dorrington* v. *L.P.T.B.* [1947] 2 All E.R. 84; 91 SOL. J. 356, in which Hilbery, J., held that a bus conductress was not in common employment with a bus driver who had negligently backed his bus into her while she was relaxing during her stand-off time (apparently a short pause between journeys) on the premises of the defendants by whom both she and the driver were employed, so as to preclude her claiming damages for personal injuries. The Court of Appeal have now affirmed the decision of Henn Collins, J., in *Lancaster* v. *L.P.T.B.* (*The Times*, 2nd July).

Naturally many of the reported cases in this half-year have turned on special facts or on the construction of a particular document to an extent which reduces their value as authorities binding in subsequent cases. Instances are *Giddys* v. *Horsfall* [1947] 1 All E.R. 460, a case concerning the right to remuneration of an agent introducing to a vendor a party who was prepared to purchase his property; and *Thompson* v. *McCulloch* [1947] 1 K.B. 447; 91 SOL. J. 147, an interesting example of circumstances in which a deed, although on its face complete and fully effective, may be no more than an escrow.

Of great interest is a case which at first sight is not recognisable as one involving common law principles. It is, perhaps, illustrative of the effect of the Judicature Act, 1873, and of the fact that, even before that Act, equity followed the law that a Chancery judge should find himself called upon, in the course of a case invoking the equitable jurisdiction of the court, to examine in detail the common law action for the recovery of money paid under mistake, and to reiterate the axiom that a mistake of law cannot be relied upon by a plaintiff in such an action (*Re Diplock* [1947] 1 All E.R. 522; 91 SOL. J. 248). In the same case, Wynn Parry, J., had to consider the right of a beneficiary to follow money which had been wrongly applied by a trustee and some of which had been paid by the recipients into their banking accounts. One of his conclusions, based on *Banque Belge* v. *Hambrouck* [1921] 1 K.B. 329; 65 SOL. J. 74, and other cases, is that where a person pays the money of another into an account at his bank without mixing it with any other money, the true owner of it can, at common law, follow it into that account and can also follow it into any asset which he can show was purchased wholly with it. It should be noted that this common law right does not depend upon the existence of any fiduciary relationship between the owner of the money and the person who deals wrongly with it. In this respect it may be distinguished from the analogous equitable doctrine of tracing assets.

The old topic of the liability of occupiers of premises for damage sustained by persons entering them has been discussed in two cases: *Sutton* v. *Bootle Corporation* [1947] 1 K.B. 359, and *Rochman* v. *J. & E. Hall, Ltd.* [1947] 1 All E.R. 895. In each case the relationship between the occupier and the person injured was that of licensor and licensee, and while space does not permit us to set out the facts and decisions, both reports will repay study by a practitioner having to advise on the law of dangerous structures.

Among the cases which settle interesting minor points of law, there may be mentioned *Martin* v. *London County Council* [1947] 1 All E.R. 783; 91 SOL. J. 264, in which Henn Collins, J., held that a hospital authority with whom certain property had been deposited upon the admission of a patient thereby became liable as bailees, and not being gratuitous bailees were under a duty of care with regard to the property received. The interesting question then arose whether purchase tax ought to be added to the intrinsic value of an article in arriving at the damages recoverable for its loss even though the particular article lost had been bought before such a tax was imposed. The learned judge held that the tax ought to be taken into consideration. Another point relating to the law of damages arose in *Kliger* v. *Sadwick* [1947] 1 All E.R. 840, in which case a manufacturer had failed to deliver to the plaintiff certain garments which were the subject of a contract between the parties, the necessary material having been supplied to him by the plaintiff at the cost of the corresponding clothing coupons. Hilbery, J., held that, being deprived of the coupons (which normally he would have recovered on the sale of the garments), the plaintiff lost the use of a corresponding amount of material in his business. The effect of this loss on his turnover in the course of a year was such that the learned judge felt bound to award as part of the damages the sum of £75 in respect of the clothing coupons. It does not appear from the report that any evidence was led as to the possibility of replacement of the lost coupons from official sources. Had such replacement been shown to be possible, presumably the decision might have been otherwise.

Outside the courts, the process of development and modernisation of the common law has also been proceeding. After a sharp agitation, February saw the introduction into the House of Lords of a Crown Proceedings Bill which strikes effectively at some long-established principles of the constitution (see 91 SOL. J. 107 and 123). Later on in the session, Lord Reading introduced and carried to second reading his Preservation of the Rights of the Subject Bill, but while all parties extolled the principles which it sought to perpetuate, there was by no means general agreement as to its timeliness and practicability as a piece of legislation.

If the main concern of the ancient common law was with the forms of action which have given us our general principles of contract and tort, it dealt, too, with some relationships of a special character which were of great importance in the life of the times. Thus, there were special obligations and rights attaching to the position of carriers and of innkeepers. Obviously these special categories of public servant are still important in changing times, and there have been recent

cases on each of them. At county quarter sessions an innkeeper was found guilty of a breach of his common law obligation to entertain a wayfarer, in circumstances which raised the whole question of booking meals at hotels in advance (*The Times*, 9th June).

A comparison of the cases of *Ludditt and Others* v. *Ginger Coote Airways, Ltd.* [1947] A.C. 233, and *Burley* v. *Stepney Corporation* [1947] 1 All E.R. 508, provides an interesting example of the reciprocity of rights and obligations at common law. Though the first-named case (a Privy Council appeal from the Supreme Court of British Columbia) was concerned with the carriage of passengers, the opinion of the board makes reference to the duty of a carrier, apart from permitted stipulations, to answer for goods which he carries "at all events." The second case shows that this duty is balanced by an implied warranty on the part of a person delivering goods for carriage that the goods are safe to be carried, although in the special circumstances of the case that warranty did not avail the carriers in their action for damages arising out of the combustible condition of the material carried.

We may perhaps conclude our brief review with a greeting to an old friend in *Henthorn* v. *Fraser* [1892] 2 Ch. 27. This stalwart of the student's case book [where the use of the post is contemplated by the parties, the posting of an acceptance of an offer completes the contract] has recently been applied by Vaisey, J., in *Eccles* v. *Bryant and Another* [1947] 2 All E.R. 63; 91 SOL. J. 384, a case, however, of which the particular facts make it more appropriate to other columns of this journal.

COMPANY LAW AND PRACTICE

RELIEF IN RESPECT OF FORGED TRANSFERS—I

IT is perfectly clear that a forged document can confer no rights on anyone and equally, of course, cannot take anybody's rights away, and consequently it is correct to say that "a forged transfer is no transfer and gives the alleged transferee no rights . . ."

A number of rather peculiar questions arise as to the relief to which a person whose name is wrongfully removed from the register of members of a company is entitled. In the 40th edition of Gore Browne, at p. 283, it is stated that "If the company, acting upon a forged transfer, remove the true owner from the register and substitute the supposed transferee, it can be compelled to replace the true owner and restore to him his shares, paying him also any dividends that may have been declared in the meanwhile."

The authority for this proposition is said to be contained in two cases both arising from the same series of transactions: *Barton* v. *North Staffordshire Railway Co.* (1888), 38 Ch. D. 458, and *Barton* v. *London & North Western Railway Co.* (1889), 24 Q.B.D. 77. On investigation, however, those cases do not support that but a different proposition.

In spite of that, however, it seems reasonably clear that the proposition itself is well founded. If you are on the register of a company and are removed you must, unless the company can justify the removal, be entitled to be reinstated. Quite clearly, a forgery being a nullity, the company cannot rely on it to justify the removal, and consequently it seems obvious on general principles that if you were once the registered holder of certain shares in the company and have done nothing to justify the company in registering someone else in respect of those shares, you can make the company put you back on the register in respect of those shares.

This form of relief is, in fact, given by the court, as appears incidentally from the case of *Re Bahia & San Francisco Railway Co., Ltd.* (1868), L.R. 3 Q.B. 584. In that case a Miss Trittin was the registered holder of five shares in the company. By reason of a forged transfer the company registered those shares in another person's name. Miss Trittin, as appears from the statement of facts in the report, succeeded in a motion to rectify the register under the Companies Act, 1862, and got the same five shares re-registered in her name. The case is reported on a question, with which we are not at present concerned, of whether the company came under any liability to the supposed transferee as the result of the shares which at one time had been registered in his name being put back in the name of the former holder.

From the fact that this relief was obtained on motion it can safely be concluded that it was admitted by all concerned that the supposed transfer was in fact a forgery, for if there had been a real dispute as to this the court would probably not have decided the question on motion. The reason, however, for which reference has been made to this case is that it provides an example of a case in which the court granted the relief which in the passage from Gore Browne quoted above is stated to be the relief to which a person whose name is wrongly removed from the register as the result of a forged transfer is entitled, namely, to get the specific shares re-registered in his name.

In the *Barton* cases, as appears from the reports, a different form of relief was granted. In the *North Staffordshire Railway Co.* case, stock of the company was registered in the names of two trustees and subsequently as the result of a forged transfer by one of the trustees was registered in the name of another person. The trustee who had committed the forgery then left the country and the other trustee and a new trustee who had been appointed applied to the company to be registered as the owners of the stock in question. The company refused to do this and the trustees thereupon issued a writ against the company claiming "that the railway company might be ordered to appropriate or purchase and to transfer to and register in the names of the plaintiffs £5,000 consolidated stock."

In his judgment, Kay, J., said: "The real claim of the plaintiffs is to be treated by the railway company as stockholders. They say, and I agree with the contention, that the forged transfers must be treated as nullities" and later in his judgment after reviewing the authorities he said: "Upon the whole I am of opinion that the plaintiffs have made out their case and are entitled to a declaration that the alleged transfers were invalid by reason of the forgery of the name of Ann Barton as a person executing the same, and the railway company must be ordered to register the plaintiffs as owners of the stock."

If that was all upon which one had to go it would appear from the passage last quoted from the judgment that the relief granted in that case was the same as that in the *Bahia Co.* case, and that the defendant company was merely ordered to reinstate the names of the plaintiffs as the holders of the actual stock which was wrongly supposed to have been transferred.

The actual order made in that case is, however, to be found in "Seton's Judgments and Orders," in the chapter entitled "Specific Relief," and it was substantially as follows: "Declare that the alleged transfers . . . were invalid; and let the defendants . . . cause the names of the plaintiffs . . . to be entered in the register of shareholders of the defendants . . . as the joint owners of £5,000 consolidated stock . . .; And let the defendants . . . be at liberty to comply with this order by the appropriation or purchase of similar amounts of the said stock to be placed in the names of the said plaintiffs . . ."

Similarly, in *Barton* v. *London & North Western Railway Co.*, *supra*, which was brought in similar circumstances, the plaintiffs again claimed that the defendants should be ordered to appropriate or purchase and register in the names of the plaintiffs the amounts of stock in question. In the Court of Appeal Lord Esher, M.R., said that the plaintiffs were entitled to that remedy. The other members of the court agreed with this view, though Lord Esher pointed out that in substance the plaintiffs were claiming to have the register made right, which was their legal right as shareholders.

There would thus appear to be two remedies open to persons who are removed from a register of members as the result of a forged transfer. One, to have the whole matter avoided and the registration consequent upon the supposed transfer set aside; and the other, to leave that registration alone but to put the person wrongfully removed in as good a position by making the company transfer to that person the stock necessary for that purpose.

That this is so appears from the report of certain interlocutory proceedings in the action in the *London & North Western Railway* case, *supra*, reported in 38 Ch. D., at p. 144. The nature of those proceedings does not concern us, but in his judgment Cotton, L.J., said that it was well established that persons whose stock is transferred out of their names in consequence of a forged deed of transfer may go against the company whose duty it is to keep the register of stockholders and say "It was your duty to keep this stock in our names until it was effectually transferred by a deed of transfer duly executed by us . . . and as you have transferred it without the authority of a good deed of transfer you must replace it." He went on to say that though the plaintiffs had taken that course, they might equally have claimed to have the stock which they could trace into the names of the supposed transferees re-transferred, in which case they would have had to have made those supposed transferees parties to the action.

This passage of Cotton, L.J.'s judgment suggests at any rate that this form of specific relief is equally available to shareholders as to stockholders, although in fact all the persons, who appear from the reports to have been granted it, have been stockholders. It might but for this passage have been argued that stock, not being in identifiable packets as shares are, could not be followed and you could not order a company to re-transfer any particular parcel of stock but merely an amount of stock. This is clearly not so, and consequently this form of relief would, on the authority of the cases referred to in this article, appear to be an available alternative in the case of shares as in the case of stock.

It is, however, of such a peculiar nature that I propose to investigate its history and nature a little further next week.

A CONVEYANCER'S DIARY

THE STATUTORY TRUSTS

It is rare indeed nowadays to find in the Law Reports a decision directly upon some point arising from the property legislation of 1925. However, *Re Harvey* [1947] Ch. 285, is such an one. It concerns, moreover, almost the one matter where the Acts have worked in a thoroughly unsatisfactory way. It is to be welcomed as distinguishing the most unsatisfactory of the earlier decisions.

The testator, Samuel Harvey, died in 1929 leaving a will made in 1912, and five codicils, of which all but the fifth were made before 1926. The fifth codicil, according to Vaisey, J. (at p. 293), was "of a very tenuous character." The learned judge continued: "All that it does is to place a certain fact on record, a thing which might have been done with equal efficacy by a statutory declaration, or other non-testamentary document. On the other hand, it does contain an express reference to the will, suggesting that the testator must have been looking at it, though, perhaps, only for the purpose of refreshing his memory as to its date. The fact remains, however, that it calls itself a codicil, was executed as such, and has been admitted with the testator's other testamentary documents to probate." It did not even purport to confirm the will or any other codicil.

So much for the nature of the testator's testamentary papers. By his will he disposed of all his "parts and shares" in certain farms "and all other my lands in the Parish of Sancreed." In fact he never had any land in severalty in that parish, but at all material times, down to 1926, he did have certain undivided shares in land there. At the beginning of 1926, the entirety of the land in which he had such shares vested in the Public Trustee on the statutory trusts. Since the first of these trusts is a trust for sale, the beneficial interests were converted into personalty, and so at his death the testator had, strictly speaking, no land or shares in land in the parish of Sancreed, but only certain interests in the notional proceeds of sale of land in that parish. This proposition long has been, and still remains, beyond argument, though it is moderately clear that Sir Benjamin Cherry did not intend his Act to effect anything of the sort.

The question, however, is whether expressions used in a will made when the testator had land, and in a form apt only to land, are to be construed as covering the corresponding interests in proceeds of sale. In *Re Kempthorne* [1930] 1 Ch. 268, it was held that converted interests of this kind passed under the residuary bequest and not the residuary devise. In *Re Newman* [1930] 2 Ch. 409, Farwell, J., had to consider the effect of a will made in 1922, by which the testator had devised "all my moiety or equal half part or share and all other my share in" certain land to his brother John, who was the other tenant in common of such land. The testator having died after 1925 the learned judge held that the devise was adeemed; he said that the words used were "not apt to pass anything but a moiety of real estate, and as there is no real estate left the devise does not operate. It may well be that this result is not in accordance with what the testator would have intended if he had considered the matter, but I am not concerned with that. I am only concerned with the language, i.e., his expressed intention. The whole devise therefore fails."

The decision in *Re Newman* has never been disturbed, nor, indeed, has it been directly challenged in a reported case. But, with every possible respect to Farwell, J., the general feeling was that it was not a case which would be followed if grounds for a distinction, even if very slight, could be advanced. In *Re Warren* [1932] 1 Ch. 42, Maugham, J., had to consider a devise of the testatrix's "share in" certain land in a will made before 1926. The case differed from *Re Newman* only in that there had been a codicil after 1925, not referring to or in any way affecting the devise, which made some changes in the will and, subject thereto, confirmed it. Maugham, J., held that the confirmatory codicil brought the whole will down to its own date; since at that date the testatrix had no land at all which answered to the description in the will, it was, therefore, admissible to treat the devise as merely a bequest, in wrong form, of the share and interest of the testatrix in the proceeds of sale. He expressly stated, however, that he would "be disposed to follow" *Re Newman* in a similar case. It must also be remembered that, though Maugham, J., felt able to come to such a decision in *Re Warren*, he had himself held, in *Re Kempthorne*, that the proceeds of sale did not pass by the residuary devise. It is difficult to see how *Re Kempthorne* could now be attacked or effectively distinguished.

There matters have rested without any further decision, and the profession has tended to think of *Re Newman* and *Re Warren* as finally expressing the two different situations arising respectively in the presence or absence of a confirmatory codicil made after the occurrence of the statutory conversion into personalty. In *Re Harvey* all parties had, apparently, proceeded from 1929 until about 1946 on the footing that the devise operated to pass the proceeds of sale. Eventually, for reasons not appearing in the Law Reports, an originating summons was taken out to test the correctness of this assumption. It is noteworthy that no one argued that *Re Newman* was wrongly decided. Vaisey, J., said, at p. 293, that he was satisfied that "Maugham, J., was reluctant to follow, and anxious to distinguish, *Re Newman*, a reluctance and an anxiety which I feel and share in the present case." He added that he thought that Maugham, J., "was not convinced of the accuracy of that decision, nor, if I may respectfully say so, am I." But he further stated that

"But for the existence of a post-1925 codicil in the present case, I should have felt constrained to disregard any doubts I may entertain as to its correctness, and to follow the decision of Farwell, J., in *Re Newman*." However that may be, he came to the conclusion that the fifth codicil in *Re Harvey* gave sufficient grounds for a distinction since that codicil, however "tenuous," did republish the will to which it was expressed to be a codicil, and thus brought the case within *Re Warren* rather than *Re Newman*. On the point as to republication, Vaisey, J., referred to the remarks of Lord Porter in *Berkeley* v. *Berkeley* [1946] A.C. 555, at p. 575.

The effect is that there will be extremely few cases in current practice where ademption will occur. It is no longer entirely usual to find that a testator, whose dispositions one is trying to construe, made his will before 1925; there are less cases where he made no codicil whatever thereafter; and the cases where both those factors co-exist with his having had undivided shares in land which were subjected to the statutory trusts must be fewer still. It is clear that if the will is made after the statutory conversion a purported specific devise is to be treated as involving a mere misdescription. And, if the will was made before the statutory conversion, such a devise can evidently be saved by the making of a codicil of any sort after the conversion; for it is difficult, if not impossible, to conceive a codicil with less content than the fifth codicil in *Re Harvey*.

LANDLORD AND TENANT NOTEBOOK

LANDLORD'S COMMON LAW RESPONSIBILITY FOR NUISANCE

A FEW months ago (91 SOL. J. 172), I called attention to the possible increase in the extent of landlords' liability for statutory nuisance which might follow from the decision in *Betts* v. *Penge U.D.C.* [1942] 2 K.B. 154. Now the recent decision in *Howard* v. *Walker and Others*, reported in *The Times* of 28th June, has again shewn us the importance of the decision in *Wilchick* v. *Marks and Silverstone* [1934] 2 K.B. 56, which undoubtedly underlay the argument for the plaintiff (full reports are not available at the time of writing). For while the defendant landlords were held not to be liable in the circumstances of the recent case, there was at least one dictum which should give those who advise such landlords some food for thought.

The plaintiff in *Howard* v. *Walker and Others* was injured on shop premises let by the first two defendants to the third defendant. The shop itself was separated from the public highway by a paved forecourt, which had become broken and uneven; and in consequence of its condition the plaintiff, who had made some purchases and left the shop and then turned sharply on remembering something else, fell, and was injured. The tenancy agreement between the first two defendants and the third defendant imposed no liability on either party for repairs—but the right to repair was reserved to the landlords (and since the accident they had in fact done repairs).

In *Wilchick* v. *Marks and Silverstone*, the plaintiff had been passing by a shop let to the first defendant by the second and third defendants, when a shutter fell off and injured her. The shop was part of a controlled dwelling-house; neither party to the tenancy had undertaken to do repairs, but an entry in the rent-book purported to reserve to the second defendants the right to effect them; they had raised the rent by the amount then permitted in the case of landlords' liability for repairs; and they knew of and had promised to remedy the defect in the shutter. In a considered judgment, Goddard, J., held that the right to repair imposed upon the second and third defendants a duty towards persons using the highway. He also held that the first defendant was liable as occupier.

The position of strangers to a contract of tenancy may be said to have improved as a result of this decision. Before then, damages had been recovered against a landlord who had covenanted with his tenant to do the repairs, e.g., in *Payne* v. *Rogers* (1794), 2 Hy. Bl. 350, but this was said to be possible because it avoided circuity of action, and the reasoning has been much criticised. But in *Wilchick* v. *Marks and Silverstone* it was held that, despite the increase of rent, no liability towards the tenant was made out, and third party proceedings taken by the latter against the landlords were in fact dismissed.

It was, of course, obvious in this case that the landlords had been aware of the defect, and Goddard, J.'s judgment made this a condition precedent to liability in such cases. This part of the judgment was subsequently disapproved in *Wringe* v. *Cohen* [1940] 1 K.B. 229 (C.A.), in which, the plaintiff's premises having been damaged by a gable-end of neighbouring premises collapsing and falling during a storm, it was held that the landlord of those premises, who had undertaken to keep them in repair, was liable though ignorant of their condition and whether or not he ought to have known of their condition; the only permissible qualifications being cases of damage due to the act of a third party or to a latent defect. The comment suggests itself that the excuse of latent defect is hardly consistent with liability of a non-culpably ignorant person, but it appears that what the court had in mind was some such occurrence as "secret and unobservable operation of nature, such as a subsidence under or near the foundations of the premises." And even then, it was pointed out, once the occupier or responsible owner had either knowledge or means of knowledge, he would be responsible if he allowed the danger to continue: a principle since applied in the case of war damage in *Leanse* v. *Egerton* (*Lord*) [1943] K.B. 323. In that case the plaintiff was injured by glass falling from a building which had been bombed; the week-end had intervened and the defendant's agents' offices had been closed; it was held that the defendant ought to have known of its condition. A point which is, in my opinion, still not satisfactorily covered is whether liability commences with actual knowledge or at the moment when the defendant ought to have known, or whether he then has a reasonable time in which to take steps to remedy or warn against the danger before he can be held to "continue" the nuisance, but the judgment does suggest that if steps had been taken immediately the damage occurred the defendant would not have been responsible for an injury sustained before anything could have been done.

But in *Howard* v. *Walker*, while nothing turned on ignorance and the defendant landlords undoubtedly had the right to repair, the plaintiff was not a passer-by or neighbour but was their tenant's invitee, the forecourt being within the curtilage of the shop. She therefore found herself up against the long series of authorities culminating in *Cavalier* v. *Pope*, [1906] A.C. 428, which will no doubt have been cited, and on this ground the action against the first defendants failed while that against the third defendant succeeded.

There was one very provocative obiter well worth considering. In the course of his judgment the learned Lord Chief Justice said: "Had Mrs. Howard been walking along the pavement and inadvertently, or in order to avoid some obstruction, stepped on to the defendant's forecourt, which had nothing to fence it from the highway, she might have been able to recover from the landlords . . . ." Granted that in such circumstances she would not have been an invitee of the occupying tenant, does it follow that the landlords would be under the same duty to her as would be landlords of premises, entitled to repair, towards persons actually on the highway or adjoining premises?

Assuming for the moment that there be no distinction between inadvertently stepping-on and stepping-on done for the purpose of avoiding an obstruction, I suggest that if a responsible landlord or an occupier were sued in such circumstances, the defence would probably seek to rely on the proposition that the plaintiff's act was accompanied by some degree of active or passive volition, so that he was a trespasser.

But it is clear that the learned judge was concentrating on liability to fence rather than liability to repair; in *Hardcastle* v. *South Yorkshire Rly. & River Dun Co.* (1859), 4 H. & N. 67, it was held that where an excavation was made at some distance from the way, and the person falling into it would be a trespasser before he reached it, the owner or occupier would not be liable; the true test was whether the excavation were substantially adjoining the way. In that case the injured person had strayed by mistake. In *Hardley* v. *Taylor* (1865), L.R. 1 C.P. 53, occupiers of a warehouse were held responsible for injury sustained by a passer-by falling in the dark into an unfenced hoist-hole which was 14 inches from the public way. These authorities suggest that the mere fact that the plaintiff has entered land uninvited will not avail the defendant if the entry be from the highway and the cause of the injury the dangerous condition of part of the premises close to the boundary; *aliter* if the plaintiff arrived, voluntarily or otherwise, by parachute.

TO-DAY AND YESTERDAY

July 14.—Between 1 and 2 p.m. on 14th July, 1737, when the courts were sitting in Westminster Hall, a large brown paper parcel, placed unobtrusively near the side-bar of the Court of King's Bench, exploded with a loud noise. It contained fireworks contrived to throw out printed leaflets to the effect that on the last day of term five "libels" would be publicly burnt in Westminster Hall: five unpopular Acts of Parliament lately passed. One of the leaflets was taken to the court and a grand jury found it a wicked, false and scandalous libel. A reward was vainly offered for the detection of the author, printer and publisher.

July 15.—On 15th July, 1756, the Gray's Inn Benchers ordered "that the several walks in the lower and upper Walks be turned and new gravelled where wanting and that a new quickset hedge be planted under the walk next Bedford Row and that the mud wall and ditch next the King's Road be cleaned and repaired." It was also ordered "that no persons be suffered to walk on the slopes or grass plots in the Walks and that no children be admitted into the Walks, except with proper persons to take care of them, and that no dogs be suffered in the Walks nor any thoroughfare into Gray's Inn Lane." An inventory of the Hall plate included two tankards, two sauceboats, four candlesticks, two large bowls with covers, a goblet, an ewer, eighteen table spoons, one soup spoon and two marrow spoons, six salts, three casters and an orange strainer, two salvers, a monteth and a large dish. The Communion Plate included two flaggons, two chalices with covers, one patten and two basins.

July 16.—On 16th July, 1795, the Gray's Inn Benchers ordered "that the stonework of the Hall windows be repaired and stuccoed."

July 17.—Anne Broadric, a charming and accomplished young lady, lived for three years with a gentleman named Errington, owning a large estate at Grays in Essex. Then, his affection cooling, he dismissed her, with what he regarded as a suitable provision for her future. He married a neighbouring lady. Shortly afterwards, Anne wrote a melodramatic letter accusing him of having "betrayed and abandoned the most tender and affectionate heart that ever warmed a human bosom," demanding a final interview and threatening that otherwise "I would seek you in the farthest corner of the globe, rush into your presence, and, with the same rapture that nerved the arm of Charlotte Corday, when she assassinated the monster Marat, would I put an end to the existence of the man who is the author of all the agonies and care that at present oppress the heart of Anne Broadric." He ignored this and, elegantly dressed, she took the Southend coach from Whitechapel, got off at the gate of his avenue, entered the house and, knowing her way, found him in the drawing-room. Crying "I am come to perform my dreadful promise," she shot him fatally with a small pistol which she immediately threw down, laughing and exclaiming to the servants who rushed in: "Here, take me; hang me; do what you like with me; I do not care now." On 17th July, 1794, she was tried for murder at Chelmsford Assizes before a great concourse of spectators. Dressed in mourning, she was tolerably composed save for occasional violent agitation. She was acquitted on the ground of insanity.

July 18.—On 18th July, 1798, Samuel Romilly was allowed "to assign his chamber one pair left No. 6 Gray's Inn Square to Herbert Jenner." (In 1791, he had taken other chambers at No. 2 New Square, Lincoln's Inn. He had taken the Gray's Inn chambers in 1779.) Jenner was called to the Bar in 1800. In 1834 he became official Principal of the Arches and Judge of the Prerogative Court of Canterbury. In 1842, he took the additional name of Fust on succeeding to some property.

July 19.—Daniel Wakefield, Q.C., died on 19th July, 1846. He was one of the ablest equity draftsmen of his day and a celebrated case lawyer. His knowledge of practice was so great that he was regularly consulted by the judges. His industry was such that he rose at six in the morning. Personally he was kind and courteous and hospitable, helpful to young barristers and good to his servants. As a Bencher of Lincoln's Inn he had a great part in building the new Hall and Library. He was a political economist as well as a lawyer. Edward Gibbon Wakefield, who became so eminent a colonial statesman after going to prison for abduction, was his nephew.

July 20.—On 20th July, 1847, Mary Milner, a good-looking and rather ladylike young woman, was indicted at the Lincoln Assizes on charges of murdering her mother-in-law, her sister-in-law and her niece with arsenic. She was acquitted of killing her mother-in-law, but convicted of killing her sister-in-law. She showed no emotion in court. She later admitted that her motive was to get the burial society money. She hanged herself a little before the time fixed for her execution.

Galvanism

A recent advertisement of the Copper Development Association recalled that "in 1786 Galvani noticed the curious twitchings of some frogs' legs hanging by a copper hook from an iron railing. His observations and experiments opened the way to the wonderful age of electricity." In a few years the "galvanic process" was being widely used. In 1803 the body of a murderer hanged at Newgate was handed over to the surgeons for experiments and subjected to the process by Professor Aldini, nephew of the inventor, to show "the eminent and superior powers of galvanism to be far beyond any other stimulant in nature. On the first application of the process to the face, the jaws of the deceased criminal began to quiver and the adjoining muscles were horribly contorted and one eye was actually opened. In the subsequent part of the process the right hand was raised and clenched and legs and thighs were set in motion. Mr. Pass, the beadle of the Surgeons' Company, who was officially present during this experiment, was so alarmed that he died of fright soon after his return home. Some of the uninformed bystanders thought that the wretched man was on the eve of being restored to life . . . The experiment, in fact, was of a better use and tendency. Its object was to show the excitability of the human frame when this animal electricity was duly applied. In cases of drowning and suffocation it promised to be of the utmost use . . . The professor, we understand, had made use of galvanism also in several cases of insanity and with complete success. It was the opinion of the first medical men that this discovery . . . could not fail to be of great, and perhaps as yet unforeseen, utility."

Restored to Life

Apropos of this subject I see that a Californian doctor was recently refused permission to conduct an experiment to restore life to an executed convict. In default he proposed to use a sheep. It seems that American legal opinion was that had the murderer been revived he would have been entitled to his freedom. In England there have been several instances of the restoration of the apparently hanged, but it was not a foregone conclusion that one condemned to hang *until he be dead* was able so to escape the consequences of his sentence. An account of a celebrated instance of such a revival is contained in a pamphlet entitled: "News from the Dead or a true and exact narration of the miraculous Deliverance of Ann Greene who being executed at Oxford, 14th December, 1650, afterwards revived and by the care of certain Physicians there is now perfectly recovered." There were appended commemorative verses in Latin, French and English by gentlemen of the University. Dr. William Petty had obtained the body for the purpose of an anatomical lecture, but bleeding poor Anne, putting her to bed with a warm woman, administering spirits and other means restored her.

THE LAW SOCIETY

ANNUAL GENERAL MEETING

(*Concluded from p. 383*)

Following the President's speech (reported in our last issue), Mr. E. E. MORGAN (Shrewsbury), congratulating the President and the Council, said that he had come to the meeting full of criticism, but that this announcement [of the prospective remission of stamp duties on practising certificates: see p. 382, *ante*] had taken the wind completely out of his sails. The whole profession would be grateful for these achievements. Many solicitors, he added, paid a fairly large premium for insurance against damages for negligence. For many years the Medical Defence Union had maintained a fund which gave its members this insurance for one guinea. If every solicitor joined such a scheme, much more favourable terms could be obtained.

Sir HARRY PRITCHARD, also congratulating the President, said that when the Council had put forward the proposals which were later embodied in the Solicitors Act, 1941, its two main objects had been the examination of solicitors' accounts and the formation of a compensation fund, both of which had imposed serious obligations on the profession. The Council had therefore proposed that the duty should be abolished. At that time the Chancellor, though sympathetic, had felt he could not do so, but promised that the request would be considered after the war. Sir Harry was very glad that it had now been honoured in such a way.

Mr. BARRY B. COHEN suggested that the reduction of the duty on articles of clerkship should be retrospective, like the recent reductions of purchase tax, so as to benefit articled clerks who had returned from the services during recent months. He asked whether the Council was pressing for this.

Mr. RAWLENCE held that it would be unfair that a clerk who had been serving for seven years in the Forces and who had passed his examination last March should have to pay, whereas one who had failed then and passed later would benefit by the abolition of the duty on admission. He suggested that before evidence was given to a commission or committee the Council should consult the views of the members in greater detail than at present. It would be fairer if meetings were held where topics could be discussed at greater leisure, and an important subject like remuneration might well be discussed at several meetings both in London and the provinces. On highly controversial points such as the extension of divorce jurisdiction to the county courts a poll shall be taken or a questionnaire issued.

Mr. C. F. WIGG PROSSER said that most returning articled clerks relied on a grant from the Ministry of Labour to complete their professional training. This covered a living allowance, the expenses of tuition and examination fees, but the Ministry would not refund the admission duty.

The PRESIDENT, in reply, said that the Council had considered more than once a collective scheme of insurance against damages for negligence. Difficulty was introduced by the personal equation, but he undertook that the question should be examined again. The Parliamentary Committee had actually discussed on the previous day the question of making the remission of duty retrospective, but the difficulty was to know where to draw the line. Wherever it was drawn there must be hard cases. In principle, moreover, it was difficult to justify retrospective remission of a tax which had been paid, especially for a body which took the view that retrospective legislation of any kind was bad. The matter was, however, still under consideration. The Council was far from satisfied with the present system of obtaining members' views. While recognising the necessity for change, it had an open mind on the kind of change which would be desirable.

The report was adopted unanimously.

CONSTITUTION OF THE SOCIETY

Mr. J. H. A. LANG moved to resolve that, as the present constitution of the Society, based on the original Charter of 1845 and its supplementary Charters, failed to provide for adequate control of the policy of the Society by its members and for their participation in its activities, a committee of twelve members be set up, of whom five should be appointed by the Council and the remainder, not being members of the Council, should be elected by the meeting, to consult with the provincial law societies and report to the Society in what respects the present constitution was unsatisfactory, make proposals for its revision or replacement and for a revision of the Charters, and suggest procedure for ensuring full consideration of such proposals by the members. He disclaimed any intention to criticise the President or the Council, but said that in conversation with his friends in the Hall he heard constant criticism of the Society and the expression of a feeling of frustration about its affairs and of a general cleavage between the ordinary member and the Council. The fault lay not in the constitution of the Council, but in the position of the ordinary member. This was summed up by the statement in "Halsbury" that the Society was "governed" by its President and Council. The Society, originally founded as a kind of law institution for the aristocracy of the profession, had during a century entirely changed its functions, outlook and membership. Nineteen successive statutes had conferred tremendous powers on the Council over every member of the profession, and when the Rushcliffe Report was implemented it would be administering an extremely important public service. Evidence given before public investigating bodies was also vitally important and would affect every solicitor in the country. The constitution, on the other hand, had not changed at all. The function of maintaining a private club and that of controlling a large and important profession were diametrically separate and much could be said for separating them. Important matters of policy should be decided by all the people whom they affected. The general meeting was not representative in any true sense. Some method must be instituted whereby members could meet together for free discussion and formulate policy which would be ultimately carried out by the Council. The Council should not govern but lead, sending out proposals for members to adopt or reject. To give the members responsibility, they should have a majority on the proposed committee.

Mr. R. S. OUVRY, seconding the motion, said that the profession must wake up to the fact that it could not leave so much important business to so few "willing horses." The reforms should go much farther than merely broadening the basis of representation on the Council.

Mr. CLAUDE HORNBY said that of the members of the Council who had given evidence before the departmental committee on criminal procedure, not one had had any experience of police-court work, and that no member of the Society with such experience had been asked for his views.

Mr. BRIGHT maintained that the Charters already gave members power to make regulations and by-laws. He could not think of any way of running such a society other than the present way. The table made a definite barrier between the Council and the general body of members, and the rules governing retirement and re-election certainly needed reform.

Mr. T. E. T. N. POWELL (Llanelly), as an officer of a provincial law society, declared that the existing committee of the Council studying reform of the constitution did not carry the confidence of the profession. The work of the Council was so tremendous that such an investigation would take years to complete; the Council was unlikely to reform itself in any way that would derogate from its present autocratic powers; and its members were regarded as dictators who were out of touch and often out of sympathy with provincial members. A constitution committee should contain a fair proportion of provincial members, to place before it points of view which the ordinary member of the Council probably had no opportunity of appreciating. If Government departments knew that they were consulting men who were elected by the free vote of every practitioner and only remained in office so long as they carried out the wishes of the ordinary member, their approach to The Law Society and their conscience concerning the inroads they had recently made into the rights of the profession would be very different.

Mr. STUART HALLINAN (Cardiff) declared that Welsh solicitors trusted and respected the Council and wished to walk on the same road. He begged the President to accept the motion.

Mr. A. BOUTWOOD (Leighton Buzzard) said that the mover was asking for ammunition for a lethal weapon. The bees in the bonnets of certain provincial solicitors should not be allowed to bring the profession into bad odour with the public. The officers of his provincial society were democratically elected, and "government" by the Council was none the less democratic for being government—did the present Government, democratically elected, not "govern" the country? The Council had achieved wonders in recent very difficult years, and had amply sought and considered the views of provincial members, even sending representatives to provincial meetings. The present position was quite satisfactory.

Mr. I. L. JONES (Ilford) remarked that the members of the Council all belonged to large firms, and asked whether any member of it had ever been in individual practice. (The PRESIDENT: "Dozens!") It was freely said that the Council was a closed shop and no candidate not supported by its members had a hope of election.

Mr. M. R. TURNER (London) said he would like to see some employed solicitors on the Council, but their election was practically impossible under the present constitution. There would be no danger in setting up a committee. The proposed committee might be combined with the existing one.

The PRESIDENT said that there were at least three employed solicitors on the Council, who were among its most intelligent, distinguished and valuable members. At least two members of the Council were solicitors in single practice. It did not seem too much to ask that critics should verify their facts. Members of the Council were quite humble-minded and did not regard themselves as having a monopoly of intelligence, virtue or sense. They were only too anxious to get as close as possible to the mind of the ordinary practitioner in London and the provinces. The conference on compulsory membership had been very successful and the Council had been much impressed by its spirit of frank discussion and co-operation, and had thought what a good thing it would be if regular meetings of the kind could take place. It saw difficulty, however, in accepting the words that the constitution "failed to provide adequate control of policy." To do so would prejudge the issue, for these words were at the root of the whole controversy. The two opposed theories that the Council once elected should be given a free hand, and that its members should be regarded as mere mouthpieces for the feelings of the constituents who had elected them, were both democratic. He suggested that the motion should state that the constitution "required drastic revision," and asked whether Mr. Lang had in mind seven particular members for the committee.

Mr. LANG answered that he had not intended to pack a committee but to leave its selection entirely to the meeting. He suggested that nominations should be requested in time for the adjourned meeting (on the election of Council members) of the 21st July. He willingly accepted the President's amendment, but both he and other speakers demurred to a suggestion by the President that the Council should

nominate the seven ordinary members, fearing lest this should compromise the committee fatally from the start in the eyes of the profession.

Some members spoke in favour of proceeding with the nominations in spite of the smallness of the number present, but others wished for time for nominations to be received by post from the general body of members. Finally the meeting decided, with six dissentients, that as the present constitution required drastic revision, a committee of twelve members should be set up of whom five should be appointed by the Council and the remainder, not members of the Council, elected by a general meeting to be held before the end of the year 1947.

The meeting then stood adjourned until the 21st July.

REVIEW

Statute Law Relating to Employment. By F. N. BALL, LL.B., Solicitor. Second Edition. 1946. London: Thames Book Publishing Co., Ltd., and Stevens & Sons, Ltd. 25s. net.

A second edition of this work has been necessitated by the passing of the National Insurance (Industrial Injuries) Act, 1946, and the National Insurance Act, 1946. The book is one of the most useful prepared for the works manager and works company secretary. An adequate table of cases renders it of great use also to the legal advisers of companies and their employees.

BOOKS RECEIVED

The Rent Acts. By R. E. MEGARRY, M.A., LL.B., of Lincoln's Inn, Barrister-at-Law. Third Edition. 1947. pp. xxxii, 213 and (Index) 8. London: Stevens & Sons, Ltd. 15s. net.

The Double Taxation Conventions. Vol. I: Taxation of Income. By F. E. KOCH, A.L.A.A., A.C.W.A. 1947. pp. xxiv and (with Index) 441. London: Stevens & Sons, Ltd. 45s. net.

Digest of Land and Property Cases, 1946. Reported in "The Estates Gazette" from 1st January—31st December. Edited by C. WILLIAM SKINNER, of Lincoln's Inn, Barrister-at-Law. 1947. pp. viii and (with Index) 242. London: The Estates Gazette, Ltd. 25s. net.

Hire-Purchase Law. "This is the Law" Series. By M. SHARE, of Gray's Inn and the North-Eastern Circuit, Barrister-at-Law. 1947. pp. vii and (with Index) 111. London: Stevens and Sons, Ltd. 4s. net.

Income Tax. "This is the Law" Series. By C. N. BEATTIE, LL.B., of Lincoln's Inn, Barrister-at-Law. 1947 pp. vi and (with Index) 116. London: Stevens & Sons, Ltd. 4s. net.

The Nuremberg Trial. By R. W. COOPER. With a foreword by Sir DAVID MAXWELL FYFE, P.C., M.C. 1947. London: Penguin Books. 1s. net.

Tables of Stamp Duties on Stocks and Shares, etc. 1947. London: Edwards & Smith (London), Ltd. 6d. net.

The Landlord and Tenant Act, 1927: A Brief Account of Business Tenants' Rights. By L. G. H. HORTON-SMITH, M.A., of Lincoln's Inn, Barrister-at-Law. 1947. pp. 8. London: The National Chamber of Trade, 3, Victoria Street, S.W.1. 4d. net.

Outline of Law in Australia. By JOHN BAALMAN, Barrister-at Law. 1947. pp. vii and (with Index) 360. Australia: The Law Book Co. of Australasia Pty., Ltd. 17s. 6d. net.

Kime's International Law Directory for 1947. Fifty-fifth year. Edited and compiled by PHILIP W. T. KIME. 1947. pp. (with Index) xiv and 428. London: Butterworth & Co. (Publishers), Ltd.; Kime's International Law Directory, Ltd. 15s. net.

Patents and Registered Designs. "This is the Law" Series. By T. A. BLANCO WHITE, of Lincoln's Inn, Barrister-at-Law. 1947. pp. ix and (with Index) 74. London: Stevens & Sons, Ltd. 4s. net.

Trade Marks and the Law of Unfair Competition. "This is the Law" Series. By T. A. BLANCO WHITE, of Lincoln's Inn, Barrister-at-Law. 1947. pp. ix and (with Index) 76. London: Stevens & Sons, Ltd. 4s. net.

Burke's Loose-Leaf War Legislation. Edited by H. PARRISH, Barrister-at-Law. 1946–47 Vol. Pts. 8 and 9. London: Hamish Hamilton (Law Books), Ltd.

The Lord Chancellor has appointed the following as arbitrators under the Coal Industry Nationalisation Act, 1946: LORD READING, K.C. (Chairman), Mr. H. V. RABAGLIATI, K.C. (Vice-Chairman), Mr. C. H. BATES, Mr. T. G. BOCKING, Mr. W. S. CARRINGTON, Mr. ROBERT GALE, Mr. THEODORE LORD, Mr. DUNCAN MCKELLAR, Mr. G. D. MAYHEW, Professor J. A. S. RITSON, Mr. T. B. ROBSON, Mr. A. T. THOMPSON, Mr. R. O. WILBERFORCE and Mr. R. E. YEABSLEY. The Secretary is Mr. D. W. A. LLEWELLYN, 10 Ennismore Gardens, S.W.7.

NOTES OF CASES

COURT OF APPEAL

Crate *v.* **Miller**

Somervell and Evershed, L.JJ., and Wynn Parry, J.
16th May, 1947

Landlord and Tenant—Furnished premises—Weekly tenancy from Saturday—Notice to quit on a Friday—Validity.

Appeal from a decision of Judge Dale given at Lambeth County Court.

The plaintiff landlord sought an order for possession of furnished premises against the defendant tenant, to whom she had given a notice to quit which he claimed to be invalid in that it expired on a Friday instead of on a Saturday. The notice, dated 5th July, 1946, read: "As solicitors for your landlord of the furnished room occupied by you and being let to you together with board at £1 15s. per week, we hereby give you notice that the landlord will terminate your tenancy on Friday, 19th July, 1946, or at the end of the next complete week of your tenancy from the date hereof, on which date you are hereby required to quit and deliver up possession." The county court judge made an order for possession and the tenant now appealed. (*Cur. adv. vult.*)

SOMERVELL, L.J., giving the judgment of the court, said that there was clear evidence on which the judge could find that the tenancy was a weekly one beginning on a Saturday. He described it as a "Saturday to Saturday tenancy." In *Sidebotham* v. *Holland* [1895] 1 Q.B. 378, which concerned a yearly tenancy beginning on 19th May, the question was whether a notice to quit and deliver up possession on 19th May, being an anniversary of the day on which the tenancy began, was good. All the members of the court were clearly of opinion that a notice to quit on the 18th would have been a good notice. A. L. Smith, L.J., doubted whether the notice to quit on the 19th was good, because, as he said, "it expired not on the last day of the year of the tenancy but on the day after." The majority decided that it was a good notice. That decision was based on the view, first, that the tenant had to quit by midnight at the end of the 18th May; secondly, that a notice to quit either on the 18th or on the 19th could be construed as a notice to quit at that moment of time, being the end of the period, in that case a year, which had begun on the previous 19th May. Lindley, L.J., said that "a notice to quit at the first moment of the anniversary ought to be just as good as a notice to quit on the last moment of the day before." In other words, a notice to quit on either day could be construed as a notice to quit when the current period in question ended. As a matter of language a notice "terminating a tenancy" on the last day of a current period (which was the form used in the present case) might, apart from *Sidebotham* v. *Holland*, *supra*, fairly be said to mean the same thing as a notice to quit and deliver up possession on the following day; for in both cases the landlord was intimating that the last day of the current period was to be the last day of the tenancy. In *Queen's Club Gardens Estates, Limited* v. *Bignell* [1924] 1 K.B. 117, a Divisional Court held that, in all cases of periodical tenancy, whether yearly, quarterly, monthly, or weekly, the same principle was to be applied and a valid notice to quit must be expressed so as to terminate the tenancy at the end of the current period. In the opinion of the court, that was right, and *Sidebotham* v. *Holland*, *supra*, therefore applied to the present case and was rightly accepted by the county court judge as authority for the view that the notice given by the landlord was effectual to terminate the tenancy. The expression "Saturday to Saturday tenancy," used by the county court judge here, and by Salter, J., in the Divisional Court, was, or might be, misleading: if a tenancy for a week began on a Saturday it expired at midnight on the following Friday. They thought Salter, J., wrong in treating ([1924] 1 K.B., at p. 133) the Monday as the second of the seven days forming a current week of the tenancy. If a tenancy began on a Saturday, Monday was the third of the seven days forming a current week. The present notice to quit contained an alternative which purported to run from the date of the notice and not of its service, which, in fact, occurred three days later, so that if the landlord had had to rely upon the alternative the length of the notice would have been insufficient. A point might possibly have been taken with regard to the validity of the use of the alternative form, which might be said to leave it in doubt on which day the landlord claimed to re-enter, but no such point was taken below, and it did not seem open to the court to consider it on the present appeal. The court expressed no opinion on the point. The appeal would be dismissed.

The tenant appeared in person. The landlord did not appear.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Bethel *v.* **Bethel and Brown**

Somervell, L.J., and Hodson and Lynskey, JJ.

16th May, 1947

Husband and wife—Divorce—Undefended petition—Husband's discretion statement—Conduct conducing to wife's adultery—Appeal against dismissal of petition—Decree pronounced by Court of Appeal—Direction to King's Proctor to investigate whether husband's conduct conducive.

Appeal from a decision of Mr. Commissioner Safford.

The appellant husband petitioned the court for a decree of divorce on the ground of the adultery of his wife with the co-respondent. The petition was undefended. The husband asked for the exercise of the discretion of the court in his favour, stating the following facts in his discretion statement. The parties were married in 1933. The marriage was unhappy owing to the wife's association with other men contrary to the husband's wishes. Quarrels frequently caused the husband to leave home. In March, 1937, after such a quarrel, he left home and remained away for two months. During that period he renewed his acquaintance with a former woman friend, and committed adultery with her on two occasions. He returned to his wife in May, 1937, after a reconciliation. In 1938, he was again forced to leave his wife owing to her conduct, and did not live with her thereafter. He then became friendly with a widow by whom in 1939 and 1942 he had two children whom he thereafter maintained. He wished to marry the widow on becoming free to do so. In addition to those facts, the husband gave the following evidence. In September, 1939, he joined the Royal Air Force, making his wife the usual allowance. She wrote to the commanding officer of every station at which he served making allegations against him which proved to be untrue. In an endeavour to rectify this state of affairs, he absented himself from duty without leave. After the subsequent court martial, the Air Ministry, on account of her conduct, stopped the allowance being paid to the wife. The husband, having received information as to his wife's conduct at Liverpool, caused inquiries to be made by the police. He was informed that there was not then enough evidence to justify the institution of divorce procedings. On 5th June, 1941, the husband was summoned at Liverpool for maintenance and ordered to pay his wife 2s. 6d. a week, although she gave no evidence as to any employment of her own. On 7th October, 1943, the wife was sentenced to two months' imprisonment for assisting in the management of a brothel at Liverpool. A police constable, who arrested the wife in connection with that offence, gave evidence of adultery. The Commissioner was of opinion that the wife's conduct in the later stages of the marriage was strongly conduced to by prior conduct, disclosed in the discretion statement, on the part of the husband, and he also took into account the finding of neglect to maintain made against the husband in June, 1941. Having regard to that fact, and to the husband's own adultery, he dismissed the petition, having declined either to adjourn the case to enable the husband to adduce evidence as to the wife's conduct earlier in the marriage, or to pronounce a decree *nisi* while sending the papers to the King's Proctor for investigation. The husband appealed.

Their Lordships allowed the appeal and pronounced a decree *nisi*, but directed the papers to be sent to the King's Proctor for investigation of the question whether the husband's conduct had in fact conduced to the wife's adultery.

COUNSEL: *Elliot Gorst.*

SOLICITORS: *Kenneth Duthie & Co.*, Brentwood.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Findlay *v.* **Findlay**

Somervell, L.J., and Hodson and Lynskey, JJ.

20th May, 1947

Divorce—Procedure—Arrears of alimony—Judgment summons—Wife's remedy—Debtors Act, 1869 (32 & 33 *Vict. c.* 62), *s.* 5—*R.S.C., Ord.* 41, *r.* 5.

Appeal from an order of Wallington, J.

On the 18th April, 1944, an order for alimony *pendente lite* was made in favour of the appellant, a wife petitioner for divorce, whereby the husband, the respondent to the present appeal, was directed to "pay or cause to be paid to the petitioner alimony pending suit at or after the rate of £118, less tax, per annum to commence from the date of the service of the petition in this cause," a date being specified. The order further provided for maintenance of the two children of the marriage, and concluded: "the said sums to be payable monthly." By a judgment summons dated 2nd December, 1946, leave to proceed having been obtained under the Courts (Emergency Powers) Act, the wife claimed £58 10s. 10d. arrears under the order, and on 10th December Wallington, J., dismissed the summons without giving reasons. The wife appealed. When the appeal first came on for hearing, the husband appearing in person, the court adjourned it in order that the King's Proctor might assist the court.

SOMERVELL, L.J., said that the form of order made here was usual. It had been adopted, for example, in *Kerr* v. *Kerr* [1897] 2 Q.B. 439; 41 SOL. J. 679. In *Linton* v. *Linton* (1885), 15 Q.B.D. 239, although the main point argued was a different one, Bowen, L.J., said (at p. 246) that arrears of alimony appeared to be a "debt due" within the meaning of s. 5 of the Debtors Act, 1869. In *Morten* v. *Brinsley* [1933] Ch. 669, it was held that the only means by which a wife could enforce payment of arrears of alimony was under s. 5 of the Act of 1869. Those cases seemed to be authority for the proposition that arrears under an order of this kind were enforceable, when appropriate steps were taken, under s. 5. It was unnecessary to decide whether that was the only means by which they could be enforced. The only remaining question was whether some further step ought to have been taken such as the issue of what was generally known as a four-day order. It appeared that no such further step had in the past been required either when such matters came before the judge in bankruptcy or, later, when they were transferred to the jurisdiction of the Probate, Divorce and Admiralty Division, by order made in 1932. The four-day order was usually issued in connection with R.S.C., Ord. 41, r. 5, whereby a judgment or order requiring a person to do an act must state the time within which the act was to be done. If the judgment or order did not so state the court regularised the position by making a supplemental order. Rule 62 of the Matrimonial Causes Rules was in somewhat similar terms. In his (his lordship's) opinion, the order made here did fix the time at which the various instalments were to be paid. For such an order to come within s. 5 of the Act of 1869, it must on the face of it be so expressed as to show with sufficient clarity that certain sums, which either were set out or could be readily calculated from what was in the order, were payable within certain successive periods. Not only was that clear on the terms of the order, but the order was in accord with the observations of Bateson, J., in *Capron* v. *Capron* [1927] P. 243, at pp. 246–7. The appeal must be allowed and the summons restored.

HODSON and LYNSKEY, JJ., agreed.

COUNSEL: *J. E. N. Russell*; the husband appeared in person; *Colin Duncan.*

SOLICITORS: *Robbins, Olivey & Lake; Treasury Solicitor.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CHANCERY DIVISION

Re **Eastern Telegraph Co., Ltd.**

Jenkins, J. 5th June, 1947

Company—Amalgamation—Conversion from operating to holding company—Winding up—Construction of memorandum of association—Ceasing to carry on business for more than a year—Substratum—Companies Act, 1929 (19 & 20 *Geo.* 5, *c.* 23), *s.* 168.

Petition to wind up.

The company was incorporated in 1872, the capital at all material times being divided into £2,000,000 of 3½ per cent. cumulative preference stock and £5,000,000 of ordinary stock. It was assumed, for the purposes of the petition, that in the event of a winding up the preference stockholders were entitled to share in the distribution of the assets *pari passu* with the ordinary stockholders. The objects of the company, as expressed in the memorandum of association, were in general the acquisition, construction, and working of telegraph lines, one specific object being "the subscribing for and acquiring shares of, or amalgamating with and sharing in the business or undertakings of, any other telegraph company or companies, and the making and carrying into effect of working, traffic, or other agreements." In 1929, as the result of an extensive consolidation and reorganisation of cable businesses, transactions took place with the result that (*a*) the whole of the ordinary stock was acquired by Cables and Wireless, Ltd., (*b*) the preference stock remained in the hands of the public, and (*c*) the whole of the physical assets of the company were acquired by Imperial and International Communications, Ltd., with the exception of certain inconsiderable assets, including a telegraph concession in Portugal. At the same time the Communications Company similarly acquired the assets of other operating companies. Cables and Wireless, Ltd., was later re-named "Cable and Wireless (Holding), Ltd.," and Imperial and International Communications, Ltd., was re-named "Cable and Wireless, Ltd." In November, 1946, the Cable and Wireless Act, 1946, became law, which provided for the compulsory acquisition by the Treasury of the capital

of Cable and Wireless, Ltd., in exchange for Government stock. At the date of the petition the Cable and Wireless shares held by the company had been transferred to the Treasury, but the amount of compensation stock had not been assessed and no such stock had been allotted. The petition was supported by holders of £365,000 of the preference stock, and it was alleged that (*a*) the effect of the arrangements made in 1929 was that the company had ceased to carry on its business for more than a year, within the meaning of s. 168 of the Companies Act, 1929, and (*b*) the substratum of the company had gone.

JENKINS, J., said that the facts showed that since 1929 the company had carried on as a holding company instead of as an operating company without objection on the part of anyone. During this period any operating activity by the company would have been in breach of the provisions of the sale agreement entered into with the Communications Company. The result of the Act of 1946 was to sever compulsorily for good and all the connection of the company with the business of cables. In connection with the point raised on s. 168 of the Companies Act, 1929, it had been argued that the company had ceased to carry on its business after the completion of the sale of the assets to the Communications Company, but that question must depend on the true construction of the memorandum of association. The transactions of 1929 were an amalgamation and an acquisition of shares in accordance with the express provisions of the memorandum. The company had continued to carry on one of the main forms of business authorised by the memorandum by virtue of its holding of shares in the amalgamated concern. The first ground on which the petition was based could not be supported. As regards the question of substratum, the doctrine, as indicated by the authorities, was that a shareholder, who had invested his money on the footing that a company was to carry out some particular object, could not be forced by a majority vote to continue to adventure his money on some different project (*Re Haven Gold Mining Co.* (1882), 20 Ch. D. 151; *Re German Date Coffee Co.* (1882), 20 Ch. D. 169; *Re Baku Oilfields, Ltd.* [1944] 1 All E.R. 24; 88 SOL. J. 85; *Re Kitson & Co., Ltd.* [1946] 1 All E.R. 435; 175 L.T. 25; *Re Amalgamated Syndicate* [1897] 2 Ch. 600). The question whether the substratum had gone depended on the construction of the memorandum of association. The principles of construction enunciated in the cases cited did not displace the conclusion arrived at above regarding the construction of the memorandum. Although it was plain that the Act of 1946 put an end to the company's connection with the businesses for which it was formed, and a different view might prevail after the compensation had been assessed and received, and the Portuguese concession and other assets got in, it was undesirable for a number of reasons to put the company into liquidation forthwith. There was no allegation that the directors proposed to adventure the company's funds in speculative undertakings, the statutory acquisition of its assets was forced on the company, and the transaction was not yet complete; the directors were the best qualified persons to negotiate with the Government regarding the amount of compensation stock; a liquidator, however capable and expert, would not have the same knowledge. The foreign concessions, whose position was a matter of anxiety, might be jeopardised. An immediate order might financially benefit the preference stockholders, but they had no monopoly of equity. The compulsory nationalisation was no reason for giving the preference stockholders an equity to compel an immediate winding up and so secure a windfall they would not otherwise have obtained in any forseeable period of time. The petition was premature, and would be dismissed with costs.

COUNSEL: *Harman*, K.C., and *Milner Holland*; *Sir Cyril Radcliffe*, K.C., and *Charles Russell*.

SOLICITORS: *Rubinstein, Nash & Co.*; *Linklaters and Paines*.

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

PRACTICE NOTE

AMENDMENT OF PLEADINGS AT TRIAL

VAISEY, J., after considering the observations in *Hyams* v. *Stuart King* [1908] 2 K.B. 696, at p. 724, directed that the following procedure should be followed in cases where a party seeks to amend his pleading at trial: the terms of the proposed amendment should be (1) reduced to writing, (2) notified to the other party or parties as early as possible in order to prevent any possibility of surprise, and (3) submitted to the judge when the application is made.

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

COURT OF CRIMINAL APPEAL

R. *v.* **Yeoman**

Lord Goddard, C.J., and Atkinson and Lewis, JJ.
30th June, 1947

Criminal law—Practice—Summary conviction—Borstal detention—Remission of convicted person to assizes or quarter sessions of same county—Criminal Justice Administration Act, 1914 (4 & 5 *Geo.* 5, *c.* 58), *s.* 10 (1)—*Criminal Justice Act*, 1925 (15 & 16 *Geo.* 5, *c.* 86), *ss.* 14 (1), 46 (1).

Application for leave to appeal against sentence.

The applicant was sentenced at Hampshire Quarter Sessions to three years' Borstal detention. The facts relating to his conviction do not call for report.

LORD GODDARD, C.J., giving the judgment of the court dismissing the application, said that the power given by s. 10 of the Criminal Justice Administration Act, 1910, as amended by s. 46 (1) of the Criminal Justice Act, 1925, to a court of summary jurisdiction in certain cases to commit a person summarily convicted of an offence to prison until the next assizes or quarter sessions, whichever appeared to the court to be the more convenient, in order that assizes or quarter sessions might consider whether he should be sentenced to Borstal detention, did not empower the court to send the convicted person for sentence to assizes or quarter sessions "for some other place," and therefore not for the county, as prescribed in s. 14 (1) of the Act of 1925, as he (his lordship) had stated in *R.* v. *Franks* [1947] W.N. 109. That subsection referred to the sending to assizes or quarter sessions by justices of a person charged with an indictable offence. Where a person within the prescribed age limit was convicted by county justices and sent up to be considered for Borstal detention, he should be sent to the next court for the county, whether quarter sessions or assizes. There was no power to send a convicted person to a court for the adjoining county for sentence to Borstal detention.

There were no appearances.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

R. *v.* **Chancellor of St. Edmundsbury and Ipswich;** *ex parte* **White**

We are asked to make clear, in connection with the report of the above case on p. 369 of our issue of 5th July, 1947, that Messrs. Tamplin, Joseph & Flux and Messrs. Gudgeons, Peecock & Prentice were acting for Mrs. Florence Paddy. The Vicar of Haughley was represented by Messrs. Evill & Coleman.

CORRESPONDENCE

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL]

The Council of The Law Society

Sir,—I notice it is proposed to reform the constitution of the Council of The Law Society, not before due time.

I suggest that the Council should consist of sixty members, thirty from London and thirty from the Provinces. These should be members made up in each area of ten members in active practice and holding practising certificates for ten years; ten members holding active practising certificates for twenty years, and ten members holding active practising certificates for thirty years and over. This would place control in the hands of the major body of younger solicitors, and break up the tendency to "monopoly professionalism," which has developed over the last generation, when the Council has been controlled by the older members, mostly members of large monopoly firms, whose work comes from large banks, insurance, finance combines, building societies, monopoly industrial combines, landed estates and other monopolies, which constitute "monopoly professionalism" just as much as "monopoly capitalism" has developed over the same period.

The tendency would be for the younger members to remain independent practitioners and small firms, rather than subservient partners in a large firm.

This is the basis of any democratic system.

Liverpool. "REFORM."

PARLIAMENTARY NEWS

HOUSE OF LORDS

Read First Time:—

TYNEMOUTH CORPORATION BILL [H.C.] [7th July.

Read Second Time:—

AGRICULTURE (EMERGENCY PAYMENTS) BILL [H.C.] [7th July.

BOROUGH OF CROYDON (RATING) BILL [H.L.] [7th July.

ELECTRICITY BILL [H.C.] [8th July.
KINGSTON-UPON-HULL PROVISIONAL ORDER BILL [H.C.] [7th July.
MARRIAGES PROVISIONAL ORDERS BILL [H.C.] [7th July.
NORTHERN IRELAND BILL [H.C.] [7th July.
PROBATION OFFICERS (SUPERANNUATION) BILL [H.C.] [7th July.
PUBLIC OFFICES (SITE) BILL [H.C.] [10th July.

Read Third Time :—
ACQUISITION OF LAND (AUTHORISATION PROCEDURE) (SCOTLAND) BILL [H.L.] [7th July.
FELIXSTOWE PIER BILL [H.C.] [7th July.
INDUSTRIAL ORGANISATION BILL [H.C.] [10th July.
LOCAL GOVERNMENT (SCOTLAND) BILL [H.L.] [7th July.
LONDON COUNTY COUNCIL (MONEY) BILL [H.C.] [7th July.
LUTON CORPORATION BILL [H.C.] [7th July.
NORTH CUMBERLAND WATER BOARD BILL [H.L.] [9th July.
STATISTICS OF TRADE BILL [H.C.] [7th July.

In Committee :—
FIRE SERVICES BILL [H.C.] [10th July.
TOWN AND COUNTRY PLANNING BILL [H.C.] [7th July.

HOUSE OF COMMONS

Read First Time :—
INVERNESS BURGH ORDER CONFIRMATION BILL [H.C.] [9th July.

To confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act, 1936, relating to Inverness Burgh.

Read Second Time :—
INDIAN INDEPENDENCE BILL [H.C.] [10th July.

Read Third Time :—
DUNDEE CORPORATION ORDER CONFIRMATION BILL [H.C.] [11th July.

To confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act, 1936, relating to Dundee Corporation.

LONDON COUNTY COUNCIL (IMPROVEMENTS) BILL [H.C.] [11th July.
TOWN AND COUNTRY PLANNING (SCOTLAND) BILL [H.C.] [11th July.

In Committee :—
CROWN PROCEEDINGS BILL [H.L.] [11th July.
FINANCE BILL [H.C.] [9th July.
FOREIGN MARRIAGE BILL [H.L.] [8th July.

QUESTIONS TO MINISTERS

ARTICLES OF CLERKSHIP (STAMP DUTY)

Mr. GRANVILLE asked the Chancellor of the Exchequer if he will consider making the reduction of stamp duty on articles of clerkship retrospective so as to include those at present serving under articles, or, as a gesture to ex-servicemen, grant a refund of stamp duty to those who paid the £80 on entering into articles after war service.

Mr. DALTON : I regret that I cannot make this concession retrospective. [7th July.

JUSTICES' CLERKS (SALARIES AND CONDITIONS)

Asked by Mr. REES-WILLIAMS what steps he is taking to implement the recommendations in the Roche Report with reference to the salaries and conditions of service of assistant clerks to justices, and their superannuation and the compulsory retirement of clerks to justices at the age of seventy-two years, the HOME SECRETARY could not say when legislation on the subject was likely to be introduced, but hoped that the question would direct attention to the desirability of standing joint committees and other authorities dealing with this matter. [10th July.

CORONERS' COURTS

The HOME SECRETARY stated in answer to a question by Mr. HOPKIN MORRIS that he could hold out no hope of legislation to amend the law dealing with coroners' courts at the present time. [10th July.

RECENT LEGISLATION

STATUTORY RULES AND ORDERS, 1947

No. 1391. **Aliens** (Employment) (Former Prisoners of War) Order. July 3.
No. 1345. **Coal Industry Nationalisation** (Valuation of Compensation Units) Regulations. June 20.
No. 1398. **Court of Session, Scotland.** Act of Sederunt Anent Procedure in Constitutional Actions and to amend the Rules of Court. Published July 9.
No. 1405. **Emergency Powers** (Defence) Road Vehicles and Drivers (Amendment) Order. July 3.
No. 1359. **National Health Service** (Mental Deficiency) Amendment Regulations. June 30.
No. 1401. **National Insurance** (Voluntary Contributors) Regulations. July 4.
No. 1353. **New Towns Compulsory Purchase** (Contemporaneous Procedure) Regulations. July 1.
No. 1354. **New Towns** (Particulars and Forms of Orders and Notices) Regulations. July 1.
No. 1393. **Non-Contentious Probate Rules.** July 2.
No. 1371. **Primary and Secondary Schools** (Grant Conditions) Amending Regulations No. 3. July 1.
No. 1389. **Regulation of Payments** (Czechoslovakia) Order. July 3.
No. 1430. Regulation of Payments (Egypt and the Anglo-Egyptian Sudan) Order. July 7.
No. 1372. Regulation of Payments (Finland) Order. July 2.
No. 1399. **Sheriff Court, Scotland.** Act of Sederunt Anent Fees of Shorthand Writers in the Sheriff Courts. Published July 9.

COMMAND PAPERS (SESSION 1946–47)

No. 7156. Commissioner of Police of the Metropolis. Report for 1946.

[Any of the above may be obtained from the Publishing Department, S.L.S.S., Ltd., 88/90, Chancery Lane, London, W.C.2.]

OBITUARY

Mr. G. E. CARTMEL

Mr. George Edward Cartmel, solicitor, of Kendal, Westmorland, died on 1st July, aged eighty-one. He was admitted in 1888, was Coroner for South Westmorland from 1907 to 1943, and Clerk to the County Magistrates in the Kendal Division for twenty-five years until his retirement during the war. He was also Registrar of the Kendal and Windermere County Courts and District Registrar of the High Court of Justice for thirty-nine years until his retirement last March. At the time of his death he had been county treasurer for Westmorland since the creation of Westmorland County Council over fifty-eight years ago.

RULES AND ORDERS

S.R. & O., 1947, No. 1393/L.18

SUPREME COURT, ENGLAND—PROCEDURE

THE NON-CONTENTIOUS PROBATE RULES, 1947

DATED JULY 2, 1947

I, the Right Honourable Frank Boyd, Baron Merriman, President of the Probate, Divorce and Admiralty Division of the High Court of Justice, with the concurrence of the Right Honourable William Allen Viscount Jowitt, Lord High Chancellor of Great Britain, and the Right Honourable Rayner Lord Goddard, Lord Chief Justice of England by virtue of s. 100 of the Supreme Court of Judicature (Consolidation) Act, 1925,* and all other powers enabling me in this behalf, do hereby make the following Rules :—

1. In these Rules :—

" The Principal Registry Rules " means the Rules and Orders and Instructions for the Registrars of the Principal Registry of the Court of Probate in respect of Non-Contentious business dated the 30th day of July, 1862, as amended by any subsequent Rules† ;

" The District Registry Rules " means the Rules and Orders and Instructions for the Registrars of the District Registries of the Court of Probate, dated the 27th day of January, 1863, as amended by any subsequent Rules.‡

2. The following Rule shall stand as Rule 124 in the Principal Registry Rules, and as Rule 117 in the District Registry Rules :—

" Grants of Representation for the Use and Benefit of Persons of Unsound Mind.

A Grant of Representation for the use and benefit of a person of unsound mind other than an executor who has no beneficial interest in the estate shall not issue unless the Registrar is satisfied by acknowledgment or otherwise that notice of application for it has been given to the Management and Administration Department at the Royal Courts of Justice.

In Solicitors' cases the notice shall be given by the extracting solicitor and in Personal Application cases by the Personal Application Department dealing with the case."

3. These Rules may be cited as the Non-Contentious Probate Rules, 1947, and shall come into operation on the 14th day of July, 1947.

Dated the 2nd day of July, 1947.

Merriman, P.

We concur, *Jowitt*, C.
Goddard, C.J.

* 15 & 16 Geo. 5. c. 49.
† S.R. & O. Rev. 1904, XII, Supreme Court, E., p. 756 ; for amdts. *see* S.R. & O. 1921 (No. 649) p. 1287, 1925 (No. 1231) p. 1539, 1926 (No. 1044) p. 1246, 1932 (No. 1015) p. 1685, 1933 (No. 985) p. 1823, 1934 (No. 366) II, p. 604, 1937 (No. 113) p. 2244, 1939 (No. 1514) II, p. 3123, 1943 (No. 897) I, p. 936 and 1944 (Nos. 491 and 1029) I, p. 978.
‡ S.R. & O. Rev. 1904, XII, Supreme Court, E., p. 829 ; for amdts. *see* S.R & O. 1921 (No. 649) p. 1287, 1925 (No. 1231) p. 1539, 1926 (No. 1044) p. 1246, 1934 (No. 366) II, p. 604, 1939 (No. 1514) II, p. 3123, 1943 (No. 897) I, p. 936 and 1944 (No. 1029) I, p. 978.

NOTES AND NEWS

Honours and Appointments

The Lord Chancellor has appointed Mr. GEORGE TREVOR KELWAY, Registrar of the Haverfordwest, Pembroke Dock and Narberth County Courts and District Registrar in the District Registry of the High Court of Justice in Haverfordwest, to be, in addition, Registrar of the Cardigan County Court as from the 1st July, 1947.

The Lord Chancellor has appointed Mr. JOHN WALTON BISHOP, Registrar of the Llanelly, Carmarthen and Ammanford and Landovery County Courts and District Registrar in the District Registry of the High Court of Justice in Carmarthen, to be, in addition, Registrar of the Newcastle Emlyn County Court as from the 1st July, 1947.

The Lord Chancellor has appointed Mr. DAVID HERBERT EVANS, Liabilities Adjustment Officer of the London-West (Ealing) Liabilities Adjustment Office, to be, in addition, Liabilities Adjustment Officer of the Birmingham Liabilities Adjustment Office.

Professional Announcement

Mr. HAROLD JOHN RICH, heretofore practising under the style of RICH & Co., has acquired the practice of Mr. HENRY FLINT, of 20, Bedford Street, Strand, W.C.2, and will hereafter practise at that address under the style of RICH, FLINT & Co.

Notes

The following additions have been made to areas covered by rent tribunals: *Huddersfield:* borough of Ossett; *Stockport:* boroughs of Dukinfield, Stalybridge and Glossop; *Bath:* boroughs of Devizes, Swindon and rural district of Highworth, urban district of Warminster, rural district of Salisbury and Wilton; *Cambridge:* borough of Peterborough; *Watford:* rural district of Berkhamstead; *Dover:* rural districts of East Ashford, Dover and Eastry; *Bedford:* urban district of Rothwell; *Birmingham:* West, rural district of Bromsgrove; *Cheltenham:* rural district of Ross and Whitchurch; *Coventry:* rural district of Warwick; *Exeter:* rural district of Holsworthy; *Kingston-upon-Hull:* rural district of Bridlington; *Maidstone:* rural district of Cranbrook; *Reading:* rural district of Newbury; *Sheffield:* urban district of Clay Cross; *Southend:* rural district of Rochford; *York:* rural district of Ripon and Pateley.

THE JUSTICES' CLERKS' SOCIETY

The annual conference of the Justices' Clerks' Society will take place this year at Hove, and will cover a period of three days commencing on the 10th and terminating on the 12th September. The programme which has been arranged combines the discussion of matters of professional interest and a number of social gatherings, including the annual dinner of the Society, which will be held at the Town Hall, Hove, on the 11th September.

The Right Honourable J. Chuter Ede, M.P., His Majesty's Secretary of State for the Home Department, has promised to address the members of the Society on the morning of the 12th September.

A reception and ball will be held at the Town Hall, Hove, by invitation of His Worship, the Mayor of Hove, as the concluding function, on the evening of the 12th September.

COURT PAPERS

SUPREME COURT OF JUDICATURE

COURT OF APPEAL AND HIGH COURT OF JUSTICE—CHANCERY DIVISION

TRINITY SITTINGS, 1947

ROTA OF REGISTRARS IN ATTENDANCE ON

Date	Emergency Rota	Appeal Court I	Mr. Justice Vaisey
Mon., July 21	Mr. Hay	Mr. Jones	Mr. Reader
Tues., ,, 22	Farr	Reader	Hay
Wed., ,, 23	Blaker	Hay	Farr
Thurs., ,, 24	Andrews	Farr	Blaker
Fri., ,, 25	Jones	Blaker	Andrews
Sat., ,, 26	Reader	Andrews	Jones

	Group A		Group B	
Date	Mr. Justice Roxburgh *Witness*	Mr. Justice Wynn Parry *Non-Witness*	Mr. Justice Romer *Witness*	Mr. Justice Jenkins *Non-Witness*
Mon., July 21	Mr. Blaker	Mr. Andrews	Mr. Hay	Mr. Farr
Tues., ,, 22	Andrews	Jones	Farr	Blaker
Wed., ,, 23	Jones	Reader	Blaker	Andrews
Thurs., ,, 24	Reader	Hay	Andrews	Jones
Fri., ,, 25	Hay	Farr	Jones	Reader
Sat., ,, 26	Farr	Blaker	Reader	Hay

STOCK EXCHANGE PRICES OF CERTAIN TRUSTEE SECURITIES

Bank Rate (26th October, 1939) 2%

	Div. Months	Middle Price July 14 1947	Flat Interest Yield £ s. d.	‡ Approximate Yield with redemption £ s. d.
British Government Securities				
Consols 4% 1957 or after	FA	111	3 12 1	2 12 2
Consols 2½%	JAJO	91½	2 14 8	—
War Loan 3% 1955–59	AO	105	2 17 2	2 5 2
War Loan 3½% 1952 or after	JD	105	3 6 8	2 10 1
Funding 4% Loan 1960–90	MN	116½	3 8 8	2 10 0
Funding 3% Loan 1959–69	AO	105	2 17 2	2 10 3
Funding 2½% Loan 1952–57	JD	103½	2 13 2	2 0 0
Funding 2½% Loan 1956–61	AO	101	2 9 6	2 7 4
Victory 4% Loan Av. life 18 years	MS	118½	3 7 6	2 13 9
Conversion 3½% Loan 1961 or after	AO	110½	3 3 4	2 11 11
National Defence Loan 3% 1954–58	JJ	104½	2 17 5	2 3 10
National War Bonds 2½% 1952–54	MS	102½	2 8 9	1 19 11
Savings Bonds 3% 1955–65	FA	103½xd	2 18 0	2 9 6
Savings Bonds 3% 1960–70	MS	105	2 17 2	2 10 10
Treasury 3%, 1966 or after	AO	103½	2 18 0	2 15 2
Treasury 2½%, 1975 or after	AO	91½	2 14 8	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	101½	2 19 1	—
Guaranteed 2½% Stock (Irish Land Act, 1903)	JJ	101½	2 14 2	—
Redemption 3% 1986–96	AO	108	2 15 7	2 13 3
Sudan 4½% 1939–73 Av. life 16 years	FA	119½xd	3 15 4	2 19 1
Sudan 4% 1974 Red. in part after 1950	MN	115½	3 9 3	—
Tanganyika 4% Guaranteed 1951–71	FA	105½xd	3 15 10	2 6 3
Lon. Elec. T.F. Corp. 2½% 1950–55	FA	101xd	2 9 6	—
Colonial Securities				
*Australia (Commonw'h) 4% 1955–70	JJ	110	3 12 9	2 10 2
Australia (Commonw'h) 3½% 1964–74	JJ	108	3 0 2	2 13 2
*Australia (Commonw'h) 3% 1955–58	AO	104½	2 17 5	2 7 6
†Nigeria 4% 1963	AO	119½	3 6 11	2 10 2
*Queensland 3½% 1950–70	JJ	103	3 8 0	—
Southern Rhodesia 3½% 1961–66	JJ	111½	3 2 9	2 10 4
Trinidad 3% 1965–70	AO	105½	2 16 10	2 12 0
Corporation Stocks				
*Birmingham 3% 1947 or after	JJ	100½	2 19 8	—
*Leeds 3½% 1958–62	JJ	106	3 1 3	2 11 3
*Liverpool 3% 1954–64	MN	104	2 17 8	2 7 3
Liverpool 3½% Red'mable by agreement with holders or by purchase	JAJO	119	2 18 10	—
London County 3% Con. Stock after 1920 at option of Corporation	MSJD	101½	2 19 1	—
*London County 3½% 1954–59	FA	106½xd	3 5 9	2 9 7
*Manchester 3% 1941 or after	FA	101	2 19 5	—
*Manchester 3% 1958–63	AO	105	2 17 2	2 8 0
Met. Water Board "A" 1963–2003	AO	103½	2 18 0	2 14 7
* Do. do. 3% "B" 1934–2003	MS	102	2 18 10	—
* Do. do. 3% "E" 1953–73	JJ	103	2 18 3	2 8 2
Middlesex C.C. 3% 1961–66	MS	106	2 16 7	2 9 10
*Newcastle 3% Consolidated 1957	MS	105	2 17 2	2 8 0
Nottingham 3% Irredeemable	MN	106	2 16 7	—
Sheffield Corporation 3½% 1968	JJ	114	3 1 5	2 12 6
Railway Debenture and Preference Stocks				
Gt. Western Rly. 4% Debenture	JJ	121	3 6 1	—
Gt. Western Rly. 4½% Debenture	JJ	121½	3 14 1	—
Gt. Western Rly. 5% Debenture	JJ	133½	3 14 11	—
Gt. Western Rly. 5% Rent Charge	FA	131½	3 16 1	—
Gt. Western Rly. 5% Cons. G'rteed.	MA	130½	3 16 8	—
Gt. Western Rly. 5% Preference	MA	119½	4 3 8	—

* Not available to Trustees over par.

† Not available to Trustees over 115.

‡ In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.

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